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United States of America

John M. Lee, Adam James M. Lee

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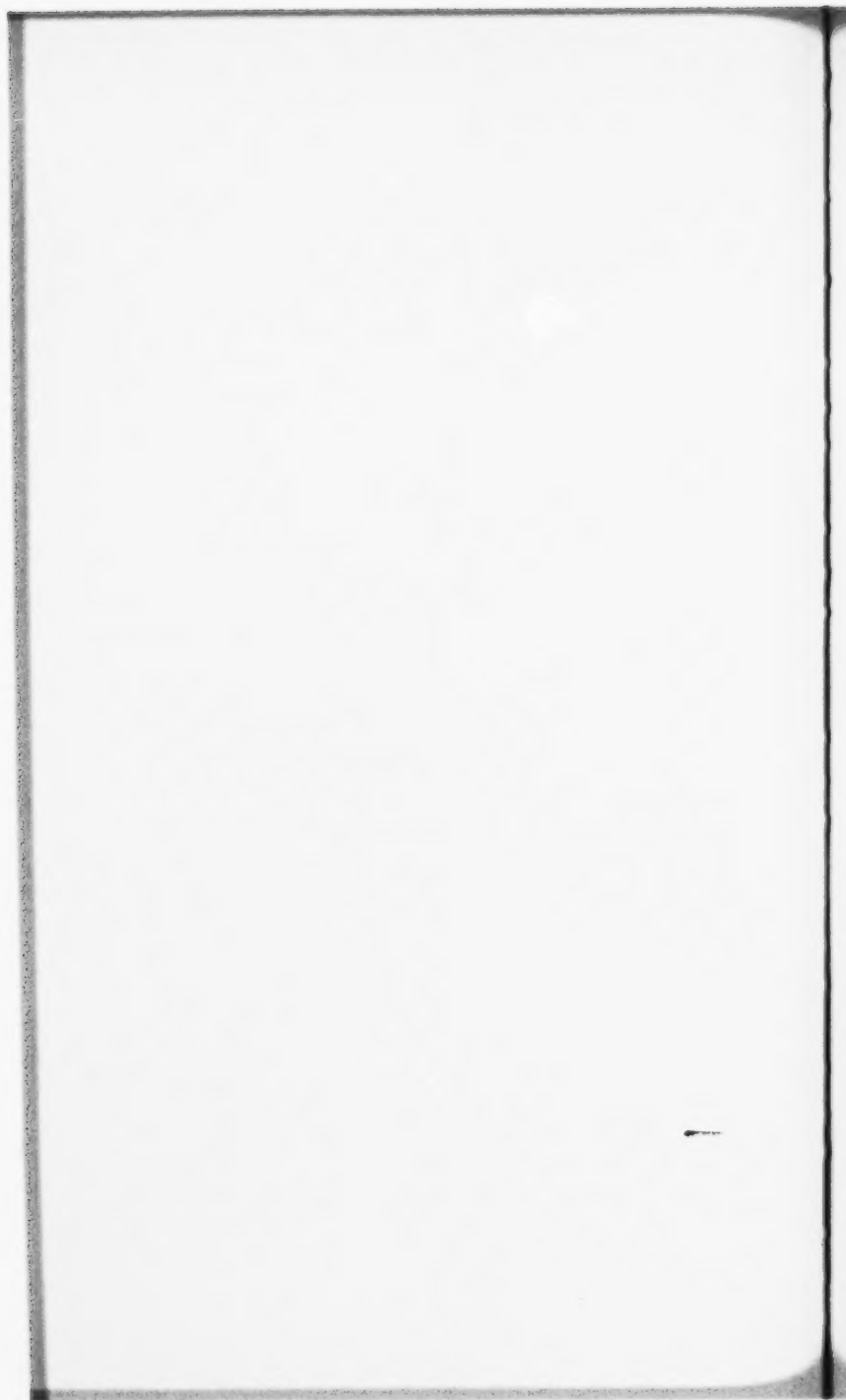
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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES M. LEE, ALIAS JAMES M. LEACH

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the First Circuit entered in the above-entitled cause reversing the judgment of the District Court of the United States for the District of Massachusetts.

OPINIONS BELOW

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 36) is reported in 14 F. (2d) 400.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on August 17, 1926. (R. 44.) On

November 16, 1926, an order was signed by the Chief Justice of the United States extending for fifteen days the time for filing this petition. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938).

QUESTIONS PRESENTED

1. Have Coast Guard officers the right to visit, search, and seize an American vessel on the high seas beyond twelve miles from the coast of the United States when such officers have reasonable ground to believe that the persons on said vessel are engaged in a conspiracy to violate the liquor laws of the United States?

2. May evidence relating to such a seizure be lawfully admitted against the defendants, over their objection, in a criminal prosecution of the persons arrested on said vessel at the time of its seizure?

STATUTE INVOLVED

This case involves, chiefly, the legality of certain acts done by Coast Guard officers on the high seas beyond the territorial limits of the United States and more than four leagues from the coast of the United States. The Circuit Court of Appeals rests its decision largely upon the effect given by it to Section 581 of the Tariff Act of 1922 (c. 356, 42 Stat. 858, 979). That section reads:

SEC. 581. *Boarding vessels.*—Officers of the customs or of the Coast Guard, and agents or other persons authorized by the Secretary of the Treasury, or appointed for that purpose in writing by a collector may at any time go on board of any vessel or vehicle at any place in the United States or within four leagues of the coast of the United States, without as well as within their respective districts, to examine the manifest and to inspect, search, and examine the vessel or vehicle, and every part thereof, and any person, trunk, or package on board, and to this end to hail and stop such vessel or vehicle, if under way, and use all necessary force to compel compliance, and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby or in consequence of which such vessel or vehicle, or the merchandise, or any part thereof, on board of or imported by such vessel or vehicle is liable to forfeiture, it shall be the duty of such officer to make seizure of the same, and to arrest, or, in case of escape or attempted escape, to pursue and arrest any person engaged in such breach or violation.

Officers of the Department of Commerce and other persons authorized by such department may go on board of any vessel at any place in the United States or within four leagues of the coast of the United States and hail, stop, and board such vessels in the enforcement of the navigation laws and ar-

rest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws.

STATEMENT OF THE CASE

The respondent, James M. Lee, alias James M. Leach, was jointly indicted with Roderick McNeil and Leopold Viera in the District Court of the United States for the District of Massachusetts for having conspired to import and bring into the United States intoxicating liquors in violation of the Tariff Act of 1922 and of the National Prohibition Act. The indictment alleged that the conspiracy was formed within the District of Massachusetts and charged at least one overt act as having been committed within that district. (R. 3-4.) No question as to the sufficiency of the indictment was raised at any stage of the proceedings.

At the trial, Boatswain A. J. Smalley of the Coast Guard testified for the Government that on February 16, 1925, while in command of a Coast Guard patrol boat, he observed the motor boat *D-683* proceeding eastwardly toward the high seas from Gloucester, Massachusetts; that he followed in the patrol boat several hundred yards in the rear of the *D-683* to a point on the high seas about 24 miles eastwardly of Boston Light, where he lost sight of said motor boat; that about an hour and a half later he discovered her, with a number of cans of alcohol on board, alongside the schooner

L'Homme, whereupon he arrested the defendants, Lee, McNeil, and Viera, who were occupying the *D-683*, and took them, together with the boat and its load of liquor, into Boston. (R. 6.)

The Government also called as a witness Thomas F. Finnegan, Deputy Surveyor of Customs at Boston, who testified to certain incriminating statements made to him by the defendants upon their arrival in Boston in the custody of Boatswain Smalley regarding the circumstances under which they had gone out to the schooner. (R. 6-8.) Finnegan also testified that the cases found on the *D-683* contained grain alcohol, an intoxicating liquor within the meaning of the National Prohibition Act. He furthermore produced a record showing that the *D-683* was registered in the name of the defendant Lee, under the alias Leach. (R. 8, 20.) No evidence was offered by the defendants.

All the evidence relating to the search and seizure of the motor boat was admitted over the objection and subject to the exception of the defendants, who asserted that the search and seizure were unlawful because having taken place on the high seas at a point twenty-four miles from the nearest land. (R. 8-9.) The jury found the defendants Lee and McNeil guilty of the conspiracy charged, but acquitted Viera. (R. 5.) From a sentence of four months' imprisonment (R. 5), Lee sued out a writ of error from the Circuit Court of Appeals for the First Circuit. That court reversed the judgment,

holding, in brief, that the District Court had erred in admitting the evidence regarding the seizure of the boat and its cargo, first, because that evidence was unlawfully obtained, as the Coast Guard had no authority to seize a vessel and its cargo on the high seas beyond twelve miles from the coast, and second, because the admission of that evidence, over the defendants' objection, was in violation of the defendants' rights under the Fourth Amendment. (R. 36-43.) The judgment of the District Court was accordingly reversed and the case ordered remanded to that court for further proceedings. (R-44.)

In support of its conclusion that the search and seizure were unlawful, the Circuit Court of Appeals declared that at common law no general right to visit and search vessels beyond territorial waters existed in time of peace; that, therefore, to render the search and seizure in this case valid, authority to take that action must have been conferred by some Act of Congress; that Section 581 of the Tariff Act of 1922, *supra*, was the only statute which vested authority in the Coast Guard to board, search, and seize vessels beyond territorial waters, and that statute expressly limited the exercise of the authority it conferred to four leagues from the coast of the United States. In the course of its opinion, which was handed down on August 17, 1926, the court expressed its disagreement with the construction given Section 581 in the decision rendered July 7, 1926, by the Circuit Court of Appeals

for the Second Circuit in *The Underwriter*, 13 F. (2d) 433.

In *The Underwriter case* the Government sought to forfeit an American vessel on the ground, among others, that it had violated the conditions of its license. The District Court ordered the libel dismissed for the reasons that the vessel had been seized by Coast Guard officers about thirty-five miles from the coast of the United States; that the seizure was unlawful because in excess of the powers conferred upon the Coast Guard by Section 581 of the Tariff Act of 1922; and that an unlawful seizure could not be made the basis of jurisdiction in the court to decree a forfeiture. (6 F. (2d) 937.) The decree was reversed by the Circuit Court of Appeals for the Second Circuit, which held (1) that the seizure of the vessel was not unlawful; (2) that Section 581 was intended to give the Coast Guard authority to board, search, and seize foreign vessels coming within the twelve-mile limit, but was not intended as forbidding the search, seizure, or detention of American vessels beyond that limit; and (3) that the jurisdiction of a court to decree the forfeiture of a vessel is in no way affected by the manner in which the vessel came into the possession of the Government.

It is manifest, therefore, that there is a direct conflict of decision between the First and Second Circuit Courts of Appeals as to the right of Coast Guard officers to make searches and seizures of

American vessels on the high seas beyond twelve miles from the coast of the United States.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in holding that United States Coast Guard officers have no authority to visit, search, and seize American vessels on the high seas beyond four leagues from the coast of the United States where such officers have reasonable cause for belief that such vessels are engaged in violating a law of the United States.

2. The Circuit Court of Appeals erred in holding that evidence obtained as the result of such a visitation, search, and seizure can not lawfully be admitted against the defendants, over their objection, in a criminal prosecution of the persons arrested on said vessel at the time of its seizure.

3. The Circuit Court of Appeals erred in vacating the judgment of the District Court and in setting aside the verdict rendered in this case.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

The construction given Section 581 of the Tariff Act of 1922 by the Circuit Court of Appeals for the First Circuit is in direct conflict with the construction given that statute by the Circuit Court of Appeals for the Second Circuit in *The Underwriter case*.

A petition for a writ of certiorari has been granted in *The Underwriter case*, docketed in this

Court under the title *Arthur Maul, Petitioner, v. United States of America*, No. 655, which petition was not opposed by the Government. It is appropriate that this case should be before the Court at the same time.

In view of the considerations stated it is respectfully submitted that the petition for a writ of certiorari should be granted.

WILLIAM D. MITCHELL,

Solicitor General.

MABEL WALKER WILLEBRANDT,

Assistant Attorney General.

ALEXANDER SIDNEY LANIER,

Special Assistant to the Attorney General.

NOVEMBER, 1926.

SUPREME COURT OF THE UNITED STATES.

No. 752.—OCTOBER TERM, 1926.

United States of America, Petitioner,	On Certiorari to the United States Circuit Court of Appeals for the First Circuit.
vs.	
James M. Lee, alias James M. Leach.	

[May 31, 1927.]

Mr. Justice BRANDEIS delivered the opinion of the Court:

In the federal court for Massachusetts, Lee and two others, all apparently American citizens, were indicted for conspiring within the United States to violate §§ 591 and 593 of the Tariff Act of 1922, c. 356, 42 Stat. 858, 981, 982, and § 3 of the National Prohibition Act, October 28, 1919, c. 85, Title II, 41 Stat. 305, 308. The defendants pleaded not guilty. Lee and one other were convicted. Lee sued out a writ of error. The Court of Appeals (one judge dissenting) vacated the judgment on the ground that evidence had been admitted which was obtained by an illegal search and seizure. 14 F. (2d) 400. This Court granted a writ of certiorari. 273 U. S. —.

On the afternoon of February 16, 1925, the boatswain of a Coast Guard patrol boat saw a motor boat of the numbered type proceed in a southeasterly direction from Gloucester harbor. He followed her at a distance of 500 yards; lost sight of her after sundown, apparently in a fog, at a point about 20 miles east of Boston Light, and discovered her later alongside the schooner *L'Homme* in a region commonly spoken of as Rum Row, at a point 24 miles from land. On board the motor boat were Lee, two associates, and 71 cases of grain alcohol. The boatswain arrested the three men, seized the motor boat, and took her with them and the liquor to Boston. There this indictment was found. It does not appear that the Government instituted proceedings to forfeit either the

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motor boat or the liquor. The motor boat, which had a length of about 30 feet, was registered in Lee's name.

The boatswain testified that when he discovered the motor boat alongside the *L'Homme*:

"I put a searchlight on her and told those aboard the motor boat to put up their hands. In the boat I found the three defendants, McNeill, Viera and Lee. I looked the boat over and found a number of cans of alcohol on board it. I searched the defendants for weapons and found none. I put two of my men on board the motorboat and took the boat and the defendants to Boston."

The liquor does not appear to have been put in evidence. The deputy surveyor of the port testified that, upon the motor boat's arrival in Boston, he examined the cases on board and found that they contained alcohol, 95 degrees proof; and that Lee, when interrogated, said: "I ran the engine and the first thing I knew I was alongside the schooner. I did not see any cases on our boat until captured by the revenue cutter." The testimony of the deputy surveyor as to what he found on the motor boat, and that of the boatswain as to what he found upon his examination of the motor boat at the time of his command to those on board to throw up their hands, was admitted over Lee's objection and subject to exception duly made.

The Court of Appeals, expressing disagreement with the conclusion reached in *The Underwriter*, 13 F. (2d) 433, held that the Coast Guard is not authorized to visit and search American vessels on the high seas more than twelve miles from the coast; that the seizure there made was without authority; that it was illegal, since it did not appear that the Government had ratified it by the institution of legal proceedings to enforce the forfeiture; that the search and seizure having been illegal, knowledge gained as a result of the illegal search could not be put in evidence, *Weeks v. United States*, 232 U. S. 383; and that the testimony of the deputy surveyor and of the boatswain was wrongly admitted.

The Government contends that the Coast Guard has authority to visit, search and seize an American vessel on the high seas beyond the twelve mile limit when probable cause exists that our law is being violated; that it has authority also to arrest persons on such vessel whom there is reason to believe are engaged in com-

mitting a felony; that here probable cause was shown that the crime, a felony, was being committed; that if any search, within the meaning of the Constitution, was made of the motor boat before she reached port, it was valid as an incident of a lawful arrest of persons whom the officer had reasonable cause to believe were engaged in committing a felony; that the constitutional prohibition against search and seizure without a warrant is not applicable to this small motor boat which does not appear to have been used as a place of residence; and that it does not appear that any search was, in fact, made before the motor boat was examined in Boston by the deputy surveyor, within the territorial limits of the United States, where search is clearly valid.

In the main the contentions of the Government are in our opinion well founded. Officers of the Coast Guard are authorized, by virtue of Revised Statutes, § 3072, to seize on the high seas beyond the twelve mile limit an American vessel subject to forfeiture for violation of any law respecting the revenue. *Maul v. United States* [*The Underwriter*], No. 655, decided this day. From that power it is fairly to be inferred that they are likewise authorized to board and search such vessels when there is probable cause to believe them subject to seizure for violation of revenue laws, and to arrest persons thereon engaged in such violation. Compare *Ford v. United States*, No. 312, decided April 11, 1927, pp. 8-13. The authority asserted is not as broad as the belligerent right to visit and search even without probable cause. Compare *The Marianna Flora*, 11 Wheat. 1, 42. In the case at bar, there was probable cause to believe that our revenue laws were being violated by an American vessel and the persons thereon, in such manner as to render the vessel subject to forfeiture. Under such circumstances, search and seizure of the vessel, and arrest of the persons thereon, by the Coast Guard on the high seas is lawful, as like search and seizure of an automobile, and arrest of the persons therein, by prohibition officers on land is lawful. Compare *Carroll v. United States*, 267 U. S. 132, 149. As the Coast Guard was authorized to seize the motor boat, the search of her by the deputy surveyor within the territory of the United States was, in any event, authorized under § 581 of the Tariff Act of 1922. The failure of the Government to institute thereafter proceedings for forfeiture of the motor boat and the

liquor did not, by retroaction, render illegal either the seizure or the search.

Moreover search, if any, of the motor boat at sea did not violate the Constitution, for it was made by the boatswain as an incident of a lawful arrest. *Agnello v. United States*, 269 U. S. 20, 30. But no search on the high seas is shown. The testimony of the boatswain shows that he used a searchlight. It is not shown that there was any exploration below decks or under hatches. For aught that appears, the cases of liquor were on deck and, like the defendants, were discovered before the motor boat was boarded. Such use of a searchlight is comparable to the use of a marine glass or a field glass. It is not prohibited by the Constitution. Compare *Hester v. United States*, 265 U. S. 57. A later trespass by the officers, if any, did not render inadmissible in evidence knowledge legally obtained. *McGuire v. United States*, 273 U. S.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.